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AMENDED IN SENATE JULY 3, 2003

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AMENDED IN ASSEMBLY APRIL 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 68

Introduced by Assembly Member Simitian

December 11, 2002

An act to add Chapter 22 (commencing with Section 22575) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 68, as amended, Simitian. Online Privacy Protection Act of 2003.

Existing law does not regulate the security and confidentiality of consumer personal and identifying information obtained by persons and entities engaged in online business transactions.

This bill would require an operator, defined as a person or entity that collects personally identifiable information from California residents through an Internet Web site or online service for commercial purposes, to conspicuously post ~~a~~ *its* privacy policy on its Web site *or online service* and to comply with that policy. The bill, among other things, would require that the privacy policy identify the categories of *personally identifiable* information that the operator collects about ~~individuals~~ *individual consumers who use or visit its Web site or online service* and *3rd parties* with whom the operator may share the

information. The bill would preempt and supersede laws of specified local government entities regarding the posting of a privacy policy on an Internet Web site, ~~other than laws related to financial institutions.~~
The bill would become operative on July 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known as, and may be cited as,
2 the Online Privacy Protection Act of 2003.

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) Each operator of a commercial Web site ~~has a continuing~~
6 ~~and affirmative obligation to respect and uphold the privacy of~~
7 ~~individual users of, or visitors to, the commercial Web site or~~
8 ~~online service who are located in California, and to protect the~~
9 ~~security and confidentiality of these individuals' personally~~
10 ~~identifiable information.~~ *or online service has an obligation to*
11 *post privacy policies that inform consumers who are located in*
12 *California of the Web site's or online service's information*
13 *practices with regard to consumers' personally identifiable*
14 *information and to abide by those policies.*

15 (b) It is the intent of the Legislature to require each operator of
16 a commercial Web site *or online service* to provide individual
17 ~~users of, or visitors to, consumers residing in California who use~~
18 ~~or visit the commercial Web site or online service who are located~~
19 ~~in California~~ with notice of its privacy policies, thus improving the
20 knowledge these individuals have as to whether personally
21 identifiable information obtained by the commercial Web site
22 through the Internet may be disclosed, sold, or shared.

23 (c) It is the intent of the Legislature that Internet service
24 providers or similar entities ~~responsible for transmitting data~~ shall
25 have no obligations under this act related to personally identifiable
26 information that they ~~do not collect, maintain, or store~~ *transmit or*
27 *store at the request of third parties.*

28 SEC. 3. Chapter 22 (commencing with Section 22575) is
29 added to Division 8 of the Business and Professions Code, to read:
30

CHAPTER 22. INTERNET PRIVACY REQUIREMENTS

22575. (a) An operator of a commercial Web site *or online service* that collects personally identifiable information through the Internet about individual ~~users of, or visitors to,~~ *consumers residing in California who use or visit* its commercial Web site or online service ~~who are located in California~~ shall conspicuously post its privacy policy on ~~the Web site~~ *its Web site, or in the case of an operator of an online service, make that policy available in accordance with paragraph (5) of subdivision (b) of Section 22578.* An operator shall be in violation of this subdivision only if the operator fails to post its policy within ~~40~~ 30 days after being notified of noncompliance.

(b) The privacy policy required by subdivision (a) shall do all of the following:

(1) Identify the categories of *personally identifiable* information that the operator collects through the ~~Internet Web site or online service~~ about individual ~~users of, and visitors to,~~ *consumers who use or visit* its commercial Web site or online service and the categories of *third-party* persons or entities with whom the operator may share ~~the~~ *that personally identifiable* information.

(2) ~~Disclose whether or not~~ *If the operator maintains a process for an individual user of, or visitor to, consumer who uses or visits* its commercial Web site or online service to review and request changes to *any of* his or her personally identifiable information that is collected through the Internet, ~~and if so, include~~ *Web site or online service, provide* a description of that process.

(3) ~~If the operator reserves the right to change its privacy policy without notice to the individual user of, or visitor to,~~ *Describe the process by which the operator notifies consumers who use or visit* its commercial Web site or online service, ~~the privacy policy shall make a statement to that effect of material changes to the operator's privacy policy for that Web site or online service.~~

(4) Identify its effective date.

~~(e) An operator who either knowingly and willfully or negligently fails to comply with the provisions of its privacy policy shall be in violation of this section.~~

22576. An operator of a commercial Web site ~~shall post or provide, upon request, to an individual user of, or visitor to, its~~

1 ~~commercial Web site or online service, the privacy policy that was~~
2 ~~in effect at the time the user or visitor first disclosed his or her~~
3 ~~personally identifiable information or initially signed up for the~~
4 ~~operator's service. This chapter, however, shall not create a duty~~
5 ~~on the part of the operator to reconstruct and post past privacy~~
6 ~~policies that were in existence prior to the operative date of this~~
7 ~~chapter, or to provide privacy policies that have not been in effect~~
8 ~~for more than five years; or online service that collects personally~~
9 ~~identifiable information through the Web site or online service~~
10 ~~from individual consumers who use or visit the commercial Web~~
11 ~~site or online service and who reside in California shall be in~~
12 ~~violation of this section if the operator fails to comply with the~~
13 ~~provisions of Section 22575 or with the provisions of its posted~~
14 ~~privacy policy in either of the following ways:~~

15 (a) *Knowingly and willfully.*

16 (b) *Negligently and materially.*

17 22577. For the purposes of this chapter, the following
18 definitions apply:

19 (a) The term “personally identifiable information” means
20 individually identifiable information about an individual
21 consumer collected online by the operator from that individual and
22 maintained by the operator in an accessible form, including any
23 of the following:

24 (1) A first and last name.

25 (2) A home or other physical address, including street name
26 and name of a city or town.

27 (3) An e-mail address.

28 (4) A telephone number.

29 (5) A social security number.

30 (6) Any other identifier that permits the physical or online
31 contacting of a specific individual.

32 (7) Information concerning a user that the Web site *or online*
33 *service* collects online from the user and ~~combines~~ *maintains in*
34 *personally identifiable form in combination* with an identifier
35 described in this subdivision.

36 (b) The term “conspicuously post” with respect to a privacy
37 policy shall include posting the privacy policy through any of the
38 following:



1 (1) A Web page on which the actual privacy policy is posted if
2 the Web page is the homepage or first significant page after
3 entering the Web site.

4 (2) An icon that hyperlinks to a Web site page on which the
5 actual privacy policy is posted, if the icon is located on the
6 homepage or the first significant page after entering the Web site,
7 and if the icon contains the word “privacy.” The icon shall also use
8 a color that contrasts with the background color of the Web page
9 or is otherwise distinguishable.

10 (3) A text link that hyperlinks to a Web page on which the actual
11 privacy policy is posted, if the text link is located on the homepage
12 or first significant page after entering the Web site, and if the text
13 link does one of the following:

14 (A) Includes the word “privacy” in a type size no smaller than
15 the type size of the majority of the remainder of the page, and is
16 located either at the bottom of the page or in the left-most column.
17 “privacy.”

18 (B) Is written in capital letters equal to or greater in size than
19 the surrounding text, or in contrasting type, font, or color to the
20 surrounding text of the same or lesser size.

21 (C) Is written in larger type than the surrounding text, or in
22 contrasting type, font, or color to the surrounding text of the same
23 size, or set off from the surrounding text of the same size by
24 symbols or other marks that call attention to the language.

25 (4) Any other functional hyperlink that is so displayed that a
26 reasonable person would notice it.

27 (5) *In the case of an online service, any other reasonably*
28 *accessible means of making the privacy policy available for*
29 *consumers of the online service.*

30 (c) The term “operator” means any person or entity that
31 ~~operates~~ owns a Web site located on the Internet or that operates
32 an online service that collects ~~or~~ and maintains personally
33 identifiable information from ~~or about a California resident a~~
34 *consumer residing in California* who uses or visits the Web site or
35 online service if the Web site or online service is operated for
36 commercial purposes, ~~including any person or entity offering a~~
37 ~~product or service for sale through that Web site or online service.~~
38 *It does not include any third party that operates, hosts, or*
39 *manages, but does not own, a Web site or online service on the*

1 owner's behalf or by processing information on behalf of the
2 owner.

3 (d) The term "consumer" means any individual who seeks or
4 acquires, by purchase or lease, any goods, services, money, or
5 credit for personal, family, or household purposes.

6 22578. It is the intent of the Legislature that this chapter is a
7 matter of statewide concern. This chapter supersedes and preempts
8 all rules, regulations, codes, ordinances, and other laws adopted by
9 a city, county, city and county, municipality, or local agency
10 regarding the posting of a privacy policy on an Internet Web site.
11 ~~This chapter does not, however, supersede or preempt rules,~~
12 ~~regulations, codes, ordinances, or laws adopted by any of those~~
13 ~~agencies related to financial institutions.~~

14 22579. This chapter shall become operative on July 1, 2004.

